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 DISTRICT OF NEVADA

Joseph A. Guerra
 8938 W. Katie Ave.
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 Tel:702-243-3427
 Plaintiff in Pro Per

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

Joseph A. Guerra,
 Plaintiff,

vs.

JUST MORTGAGE, INC.; CHASE HOME
 FINANCE, LLC; MERS and DOES
 1-10,

Defendants.

Case No:2:10-cv-00029-KJD-RJJ

REPLY TO DEFENDANTS CHASE
 HOME FINANCE, LLC AND MERS'
 OBJECTION TO PLAINTIFF'S
 OBJECTION TO MAGISTRATE
 JUDGE'S ORDER DOC#105

The Plaintiff hereby replys (the "Reply") to Defendants,
 Chase Home Finance, LLC and MERS' Objection To Plaintiff's
 Objection To Magistrate Judge's Order Doc#105. This Reply is
 supported by the following Memorandum of Points and Authorities:

1.Chase/MERS attorney's hypertechnical and disingenuous
 argument can be swiftly rejected because **she failed to mention**
 the most important argument the Plaintiff has raised in his
 Objection to Magistrate Judge's ORDER was the **abuse of his**
discretionary power.

2.The Court improperly imposed a Sanction upon the
 Plaintiff without specifically citing its authority for doing so



1 and without giving Plaintiff "express notice of its intention to
2 impose a severe monetary sanction on him before the Hearing Date
3 which was held on August 06, 2012.
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6 3. As for the Court's failure to sepcifically articulate the
7 basis for its power in imposing the sanction, well then, the
8 Court was relying on its inherent authority. See United States
9 v. Seltzer, 227 F.3d 36, 42(2d Cir. 2000) (finding of bad faith
10 not required for sanction under inherent authority when such
11 authority is used). The Plaintiff does not dispute that the
12 Court's inherent authority includes the power to sanction
13 Plaintiff for violating judicial order; rather, the Plaintiff
14 argues that the Magistrate Judge failed to incant the term
15 "inherent authority" in imposing these sanctions in this case
16 rather than mentioning it during the Hearing when the Judge
17 stated that he relied on Rule 16(f) or 37. Although case law
18 supports the authority of the Magiatriate Judge to impose
19 sanctions under Rule 16(f) and 28 U.S.C. § 636(e)(2). My
20 situation is that the Magistrate Judge had imposed too severe a
21 sanction(s) with high fees and expenses against the Plaintiff
22 without any evidentiary support from Case Law or stated the
23 proper Code of Written Law which supports his ruling. As a
24 result, the Magistrate Judge had abused his discretionary Power.
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1 See Belk of Spartanburg S.C. Inc. v. Thompson, 337 S.C. 109,
2 126-27, 522 S.E. 2d 357, 366(Ct. App. 1999).
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5 4. The Magistrate Judge did not follow the plain language of
6 Rule 16(f) because if he had, he would have read that sanctions
7 under Rule 16(f) are discretionary, first the Court must
8 carefully determine whether Plaintiff had caused the delay on
9 purpose or otherwise interferes with the expeditious management
10 of trial preparation. [See Goforth v. Owens, 766 F.2d 1533,
11 1535(11th Cir. 1985)] before embarking on the discretionary part
12 of the decision. The Rule is **clear** where the Court **must** first
13 determine whether Rule 16(f) has been violated in bad faith.
14 Only then can it engage in discretionary decisions on whether to
15 impose sanctions, particularly, "**excessive fines and penalties**
16 **shall not be imposed**" if no wrongdoing was discovered.
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20 5. Federal magistrate judges are creatures of statute, and
21 so is their jurisdiction. Unlike district judges, they are not
22 Article III judicial officers, and they have only the
23 jurisdiction or authority granted to them by Congress, which is
24 set out in 28 U.S.C. § 636. As applicable here where the parties
25 **did not consent** to proceeding before the magistrate judge, see
26 §636(c)(1), the district court may designate a magistrate judge
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28

1 to consider various matters. See §636(b). These matters are
2 generally categorized as 'dispositive' or 'non-dispositive,' and
3 a magistrate judge's authority with respect to each category is
4 different: Magistrates may issue orders as to non-dispositive
5 pretrial matters, and District Courts review such Orders under a
6 clearly erroneous or contrary to law standard of review.

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8 28 U.S.C. § 636(b) (1) (A). While magistrates may hear dispositive
9 motions, they may only make proposed findings of fact and
10 recommendations, and district courts must make de novo
11 determinations as to those matters if a party OBJECTS to the
12 magistrate's recommendations. Id. § 636(b) (1) (B), (C). First
13 Union Mortgage Corp., v. Smith, 229 F.3d 992, 995 (10th Cir.2000)
14 (internal citations, quotations, and brackets omitted).
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18 6. Any party is free to withhold consent to magistrate
19 jurisdiction without adverse consequences. 28 U.S.C. §636(c) (2);
20 Rule 73(b), Fed.R.Civ.P.; Anderson v. Woodcreek Venture Ltd.,
21 351 F.3d 911, 913-14 (9th Cir. 2003) (pointing out that consent is
22 the "touchstone of magistrate judge jurisdiction" under 28
23 U.S.C. §636(c). "A party to a civil case has, subject to some
24 exceptions, a constitutional right to proceed before an Article
25 III judge." Dixon v. Ylst, 990 F.2d 478, 479 (9th Cir. 1993) (citing
26 Pacemaker Diagnostic Clinic of Am. Inc. v. Instromedix, Inc.,
27 725 F2d 537, 541 (9th Cir. 1984) (en banc)).
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1 J. Glover v. Alabama Dept. of Correction, 660 F.2d 120, 122(5th
2 Cir. Unit B Oct. 1981). Furthermore, the magistrate judge's
3 order is not final. See Title 28 U.S.C. §636(b), (c) & § 1291;
4 and Perez-Prego v. Alachua County Clerk of Court, 148 F.3d 1272,
5 1273 (11th Cir. 1998).
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8 7. "The Supreme Court has stated that the Constitution
9 requires that the judicial power of the United States be vested
10 in courts having judges with life tenure and undiminishable
11 compensation in order to protect judicial acts from executive or
12 legislation coercion. O'Donoghue v. United States, 289 U.S. 516,
13 531, 53 S.Ct. 740, 743, 77 L.Ed. 1356 (1933)". A decision
14 without consent by a magistrate, a non-Article III judge, would
15 undermine this objective of the Constitution and might violate
16 the rights of the parties. Willie James Glover, Plaintiff-
17 Appellee Cross-Appellant, v. Alabama Board of Corrections, Et
18 Al., Defendants, James Towns, Defendant-Appellant Cross-
19 Appellee., 660 F.2d 120 (5th Cir. 1981).
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24 8. Moreover, Chase/MERS were not represented by a person
25 with decisionmaking authority to settle the case which was also
26 in violation of the Magistrate Judge's ORDER!(Doc. #86). I am
27 not contesting the law but, I am merely requesting that the
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1 Magistrate Judge to interpret the law in accordance with his own
2 Oath of Office.

3 The Plaintiff has reason to believe that Magistrate Judge
4 Johnston's ORDERS (Doc#86 and Doc#105) has violated the most
5 basic Due Process of my Constitutional Rights.
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8 WHEREFORE, I pray that this Court review the Magistrate
9 Judge's Orders and all of Plaintiff's filings in this case de
10 novo and make a sound decision to vacate the Magistrate's Order
11 (Doc#105).
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15 Respectfully Submitted

Date: 30th day of August 2012

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18 Joseph A. Guerra, UCC1-308
19 Plaintiff in Pro Per
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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2012, I mailed a copy of this **REPLY TO DEFENDANTS CHASE HOME FINANCE, LLC AND MERS' OBJECTION TO PLAINTIFF'S OBJECTION TO MAGISTRATE JUDGE'S ORDER DOC #105** to the following parties by First Class Mail:

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